

DATE: April 30, 2013

TO: Early Intervention Services Stakeholders

FROM: Karen Walker, Program Administrator

Early Support for Infants and Toddlers (ESIT)

SUBJECT: Early Intervention Policies and Procedures – Public Comments and ESIT

Response

Before adopting a new policy or revising an existing policy, the Department of Early Learning (DEL), Early Support for Infants and Toddlers (ESIT) program is required to give the general public, including individuals with disabilities, parents of infants and toddlers with disabilities, early intervention providers and members of the State Interagency Coordinating Council the opportunity to participate by giving written comments and/or by attending a public hearing via Webinar. The proposed policies and procedures submitted for Public Comment were available on ESIT's website with the request for stakeholder written comment extended to all interested parties. The opportunity to provide verbal comments was also offered through the public hearing Webinar process.

The comments below are excerpts from the comments received by ESIT. The majority of the comments concerned the System of Payments and Fees Policy (SOPAF). In a few circumstances, ESIT omitted comment verbiage that was not considered germane. The following public comments and ESIT's responses are provided:

## Chapter 8, 8(k)(4), (5), and (6)IFSPs,

1. <u>Comment:</u> insert "and" after number (4) and insert and "or" after number (5).

Response: Chapter 8, is based on CFR 303.343 (a) (I –vi), IFSP Team meeting and periodic review. After review of this regulation, ESIT revised the punctuation to reflect the punctuation found in this citation.

#### Chapter 20, System of Payments and Fees (SOPAF) Policy

1. Comment: 20. B.9 (d) Replace "Coat" with "Cost"

20. C.5. Delete "a Fee" after Inability to Pay

20. C.5 (g) Delete "a monthly fee"

20. C.6.C. (1) And (2) Add "Adjusted annual" to income to be consistent with 20.B.9 (g)

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#### (Chapter 20, System of Payments and Fees (SOPAF) Policy – Continued)

Response - Chapter 20 SOPAF typographical corrections were made.

- 2. <u>Comment:</u> Because the Monthly Fee Schedule and other supporting documents were not included with the System of Payments and Fees policy, the policy cannot be adequately evaluated by the public.
  - <u>Response</u>: ESIT recognizes that having the supporting documents included with the policy could have enhanced the commenters understanding of the policy and implications for implementation. It is expected that the supporting documentation needed for policy implementation will be revised over time, as long as revisions do not conflict with the policy.
- 3. <u>Comment:</u> What happens to those families who have private insurance coverage but the plan does not cover those services which are subject to Family Cost Participation. Will the Monthly Fees apply for the service then? I am thinking of services such as counseling and nutrition.
  - <u>Response:</u> Counseling and nutrition services are services and functions subject to Family Cost Participation and for which co-payments, co-insurance, deductibles, or monthly fees may be charged to families. (20.B.2 Functions and Services Subject to Family Cost Participation).
- 4. <u>Comment</u>: Regarding 20.B.4 (e) "the family will be required to pay insurance co-pays...."

  There needs to be a statement of clear requirement for the agencies to not only bill copays but to ensure that they collect them. <u>20. B.6 (h)</u> section addresses what to do when the parents don't pay, but in order to have consistent practices amongst agencies, a clear statement of the agencies' responsibilities is recommended.
  - <u>Response:</u> ESIT believes the existing policy language is sufficient to establish this requirement.
- 5. <u>Comment:</u> Regarding 20.B.7 Definition of Ability to Pay, it's not clear about what happens when the expenses are less than 10% when calculating Inability to Pay. If less than 10%, the non-reimbursed expenses do not count at all? What was the reason for using the 10% for the Definition of Ability/Inability to Pay? It seems very high

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#### (Chapter 20, System of Payments and Fees (SOPAF) Policy – Continued)

Response: The IRS allows adjustments to annual income for tax return purposes based on expense types. Allowable expenses that exceed a defined level have the potential to adjust annual income for tax return purposes. When determining Ability or Inability to Pay, early intervention family cost participation requirements also permit adjusting annual income for certain types of expenses. The IRS identifies 7.5% as the threshold for deducting only medical and dental expenses. Only medical and dental expenses that exceed 7.5% can be applied towards adjusting annual income. In addition to medical and dental, the IRS also considers child support, alimony and child care costs incurred while working or going to school also as allowable expenses. Because ESIT has included these additional allowable costs for the purpose of adjusting annual income, the allowable annual expense threshold has been increased to 10%.

When a family's non-reimbursed expenses for medical, dental, child support, alimony and child care costs incurred while working or going to school <u>are below 10%</u>, the family will not be able to adjust their annual income due to these expenses. Of the allowable expenses, only the expenses <u>that exceed 10%</u> will be used to adjust income to determine Ability or Inability to Pay.

6. <u>Comment</u>: Can any amount be adjusted or have to be more than 10%?

<u>Response:</u> When a family's non-reimbursed expenses for medical, dental, child support, alimony and child care costs incurred while working or going to school <u>are below 10%</u>, the family will not be able to adjust their annual income due to these expenses.

7. <u>Comment:</u> Related to Inability to Pay, 20.C.5 (h), should it also say OR a monthly fee (following insurance co-pays, co- insurance and deductibles)?

Response: ESIT believes this issues is addressed in 20.C.6 Fees.

8. <u>Comment:</u> 20.B.9 Fees (a) references that "ESIT has established a monthly fee for early intervention services subject to Family Cost Participation". (c) states that this monthly fee schedule "will be updated on an annual basis." (g) states that the monthly fee is based upon "family size and adjusted annual income."

The monthly fee schedule has not been provided to the public. This does not allow the public to adequately comment on the impact of the fees that are set. A limited set of

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## (Chapter 20, System of Payments and Fees (SOPAF) Policy – Continued)

people have viewed the monthly fee schedule. This should be disclosed to the public to allow for people to truly evaluate this new policy.

- <u>ESIT Response:</u> ESIT recognizes that including the monthly fee schedule would have been beneficial. Since the sliding fee schedule and other SOPAF related materials are considered supplemental to the policy, ESIT will plan to publish updated supplementary materials as they are revised based upon stakeholder and practitioner input.
- 9. <u>Comment:</u> Without access to the Monthly Fee Schedule and associated work sheets, we cannot fully evaluate the System of Payments and Fees policy and its impact on Washington's early intervention system. To agree with the system of payments and fees policy, the monthly fee schedule and associated worksheets/documents must be disclosed and considered along with the policy to determine the impact of the policy on the system and involved families. Why does the general public not have access to all the information?
  - <u>Response:</u> ESIT recognizes that including the monthly fee schedule would have been beneficial. Since the monthly fee schedule and other SOPAF related materials are considered supplemental to the policy, ESIT will plan to publish updated supplementary materials as they are revised, based upon stakeholder and practitioner input.
- 10. <u>Comment:</u> Will we have the ability to modify the fee schedule to create a balance between what those who let us use their insurance pay vs. what those who deny access to insurance pay?
  - <u>Response</u>: ESIT will continue to rely on the advice of the SICC Funding Committee as it revises and modifies the SOPAF supplementary materials including the Monthly Fee Schedule.
- 11. <u>Comment:</u> Regarding <u>20.B.5.(e)</u>, I am particularly concerned about this statement in the policy "In accordance with 34CFR §303.521(a)(4)(iv) (2011), families with public insurance or benefits will not be charged disproportionately more than families who do not have public insurance or benefits or private insurance."
  - If families with insurance cannot be charged more than families without, then we need to charge families without insurance more so it comes closer to what families with insurance have to pay. As it is, families who deny access to their insurance will be paying much less than families who use their insurance. Families who access 4-5 services per

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## (Chapter 20, System of Payments and Fees (SOPAF) Policy – Continued)

week have some substantial copays and deductibles. They will start denying access to their insurance because it will be less costly to pay the fee than to allow use of their insurance.

<u>Response</u>: ESIT will continue to rely on the advice of the SICC Funding Committee as it revises and modifies the SOPAF supplementary materials including the Monthly Fee Schedule.

12. <u>Comment:</u> I have significant concerns about the impact the system of payment policy will have on the provision of services to families, especially to those families who are currently receiving direct services from school districts such as ours. I know I am not alone, as there are many folks out there who do not know what impact this policy will truly have, especially since the procedures for implementation are not fully developed. I know this policy is in the Part C grant application. I know that my input will not result in changes to the application, but I wanted you to know that it causes me great concern and I believe that some of the unintended and unknown consequences could result in fewer families and children receiving early intervention services, which greatly saddens me.

Response: Even though Washington has implemented a System of Payments and Fees policy for many years, it has been inconsistently implemented. The 2011 federal regulations that govern early intervention services increased requirements regarding state SOPAF's policy. The ESIT SOPAF's policy was revised to meet these strengthened requirements. A family's "inability to pay" for services that are subject to Family Cost Participation will not prevent a child or family from receiving needed services. If a family has been initially determined "able to pay", and at some point determines they cannot continue to pay, they will be able to make payment arrangements with the provider or program. The payment arrangement made will be locally negotiated and determined.

13. <u>Comment:</u> The monthly fee schedule that has been established will severely impact revenue for early intervention programs and services. The fee schedule encourages families to deny using their insurance. This may lead programs to under-serve and recommend less services for a child, as the family will pay the same amount for one session of therapy per month or 12 sessions of therapy per month. The impacts on revenue for early intervention programs and services will impact families in that a child may not get all the therapies he/she needs. It will lead to lower quality services and

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## (Chapter 20, System of Payments and Fees (SOPAF) Policy – Continued)

staff. The monthly fee schedule should be adjusted to account for recommended intensity of services.

<u>Response</u>: ESIT will continue to rely on the advice of the SICC Funding Committee as it revises and modifies the SOPAF supplementary materials including the Monthly Fee Schedule.

14. <u>Comment:</u> I am deeply concerned about the proposed family cost participation decision process and monthly fee schedule. As written, I feel strongly that the two documents will create a disincentive for families to use their insurance and cause more families to deny access to insurance. This will result in families paying much less than insurance would pay which will cause serious harm to EI providers across the state. As you may be aware, a cost study was recently conducted which indicated that insurance revenues across the state were being underutilized. The new family cost participation processes will only make it more challenging for providers to access this much needed funding source. The system is already very fragile. Making it more difficult to access insurance will only cause more harm and potentially destabilize the entire system.

<u>Response</u>: ESIT will continue to rely on the advice of the SICC Funding Committee as it revises and modifies the SOPAF supplementary materials including the Monthly Fee Schedule.

15. <u>Comment:</u> The monthly fee schedule that I have seen through an ESIT Committee and Local Lead Agency Meeting is arranged in a way that incentivizes many families to deny access to their insurance. Because families will be incentivized to deny access to their insurance, revenue for program and services will be severely impacted which will most likely negatively affect quality and quantity of services. Because the intensity of services recommended for a family are not a factor in this scale, it encourages programs to under-serve and recommend a lower level of intensity of services than what is needed. I am afraid that children and families will not get the services they need, unless the monthly fee schedule is adjusted to account for this very important factor.

<u>POSSIBLE SOLUTION</u>: Create tiered fee scales based on the intensity of IFSP PLANNED services on the IFSP Service Plan.

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## (Chapter 20, System of Payments and Fees (SOPAF) Policy – Continued)

- Thus, for children who need many hours of insurance billable services each week, they would be placed on the high intensity fee scale. This scale would still consider family size and adjusted annual income, but fees would be increased significantly at each level from the current Schedule so that it does not incentivize families to deny access to insurance.
- For a child who may only need one hour of insurance billable services a month, they would be placed on the low intensity fee scale. Again, this scale would still consider family size and adjusted annual income, but the fees set would be as proposed or lower if needed so that the fees set are not exceeding the amount that they would be charged otherwise for a once a month visit.
- The service plan and fee conversation can happen concurrently so that this is in place before services are started.

The OSEP comments provided to ESIT in regards to the policy sent to OSEP on 7/18/12 requested that ESIT must either "(1) explain how parents are able to determine the dollar amount of the fees for services, including how parents are informed of that process, or (2) revise the Schedule to more specifically address the amount of fees." ESIT responded saying "we will implement a monthly fee schedule based on the Federal Poverty Level Guidelines." I believe that the proposed solution above can be implemented in a way that is still aligned with OSEPs feedback and requirements. The key pieces are using PLANNED services on the IFSP, not delivered services which can only be figured after the fact. In addition, fees can still be pre-determined and billed per a monthly fee schedule. The only change is to have a more sensitive scale that is tiered to also consider the intensity of planned services. This could also be reviewed at any IFSP Review where services are modified.

<u>Response</u>: A "tiered" approach to implementing a Monthly Fee Schedule will be shared with the Funding Committee. Additionally, ESIT will plan to discuss the feasibility of this concept with its OSEP contact and with its Part C finance consultant.

16. <u>Comment:</u> The Income and Expense Verification Form Section E. could be made clearer. The Income Verification form could also include a step after Section D to show the Adjusted Annual Income amount which will be used for determining the Family Fee amount along with family size.

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# (Chapter 20, System of Payments and Fees (SOPAF) Policy – Continued)

<u>Response</u>: ESIT will share this suggestion with the SICC Funding Committee as it revises and modifies the SOPAF supplementary materials including the Income and Expense Verification Form.

If you have any questions regarding ESIT responses, please call me, at (360) 725-3516 or <a href="Mailto:Karen.Walker@del.wa.gov">Karen.Walker@del.wa.gov</a>. Thank you for responding to the ESIT request for public comment.

cc: SICC

**SICC Funding Committee**